

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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IRENE HOMRICH, DENNIS HOMRICH, and  
DOUGLAS HOMRICH,

Plaintiffs-Appellants,

UNPUBLISHED  
March 18, 2021

No. 353217  
Ottawa Circuit Court  
LC No. 18-005579-NZ

v

TAMARA ANDERSON,

Defendant-Appellee.

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Before: MARKEY, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

Plaintiffs Irene Homrich, Dennis Homrich, and Douglas Homrich, appeal as of right the order of the trial court granting defendant, Tamara Anderson, summary disposition of their complaint under MCR 2.116(C)(7), (8), and (10). We affirm.

**I. FACTS**

This appeal arises from plaintiffs’ claim that defendant took money and property from Irene Homrich to the detriment of the plaintiffs. Irene Homrich is the widow of Lyle Homrich, who died on August 22, 2011. Plaintiffs Dennis and Douglas Homrich, and defendant Tamara Anderson, are the children of Lyle and Irene. During the times relevant to this case, Tamara lived in Michigan, Douglas lived in South Carolina, and from November 2008 until September 2013, Dennis was incarcerated. At the time of Lyle’s death, Tamara was the only one of the three siblings who lived in close proximity to Irene.

At the time of Lyle’s death, Irene and Lyle owned and resided at a home at 6861 Belhurst Avenue in Jenison, Michigan. Irene continued to live in the home at the time this lawsuit was initiated. After his release from incarceration, Dennis joined Irene in living at the house at 6861 Belhurst. Irene and Lyle also owned a house at 6879 Belhurst, next door to the home where they

resided. According to plaintiffs, Irene and Lyle purchased the house at 6879 Belhurst as an investment, intending to sell the property at a profit. In 2010, Lyle and Irene listed the house at 6879 Belhurst for sale. On August 12, 2011, Jared VanBaren presented a written offer to purchase the house, and Lyle and Irene accepted the offer. On August 22, 2011, before the sale could be completed, Lyle died.<sup>1</sup>

The parties do not dispute that the house at 6879 Belhurst then passed to Irene, the surviving joint tenant. According to defendant, shortly after Lyle's death she and Douglas in person together told VanBaren that the house was no longer for sale; VanBaren confirmed that shortly before the anticipated closing on the house he was inspecting the house when defendant and a man entered the house and told him that the house was no longer for sale. The parties appear to agree that in September 2011, a mutual release of the purchase agreement was signed by Irene and VanBaren, which thereby cancelled the sale. However, in their Complaint plaintiffs allege that defendant "cancelled" the sale agreement; by contrast, defendant asserted in her answers to Interrogatories that the cancellation of the sale of 6879 Belhurst was facilitated primarily by Douglas, who was the main contact person for the real estate agent regarding the transaction. Defendant also asserted that Douglas urged her to move into the home at 6879 Belhurst to be near Irene.

The parties do not dispute that in September 2011, shortly after Lyle's death, Irene, Douglas, and Tamara met with Irene's attorney, John Tamboer, and her financial planner, Michael Reinhart. According to Reinhart, at the meeting Douglas suggested that Tamara move in with Irene, or move into the house next door at 6879 Belhurst, to care for Irene. In addition, at the meeting it also was suggested that Irene divest herself of some assets<sup>2</sup> in anticipation of possible Medicare concerns. Reinhart suggested that Irene place \$50,000 in an annuity in Tamara's name to divest herself of the money, and when eventually Irene's house was sold, Douglas and Dennis would split the proceeds of that sale as equivalent shares to Tamara's share. To accomplish the transaction, Reinhart liquidated an annuity held by Lyle, created a new annuity for Irene in the amount of \$217,000, and created the \$50,000 annuity for Tamara. Reinhart stated in his Affidavit that Irene appeared to understand what she was doing, and that her attorney, John Tamboer, was present. However, during discovery Douglas asserted that he was not present during a discussion of an annuity for Tamara, and Irene<sup>3</sup> testified that she did not remember the \$50,000 annuity for Tamara.

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<sup>1</sup> The parties agree that Lyle Homrich's will named Irene and Tamara as co-personal representatives of his estate. On September 22, 2011, a probate file for Lyle's estate was opened in the Ottawa Probate Court; the file was closed July 31, 2014. Plaintiffs' complaint does not allege that Lyle's estate was improperly probated.

<sup>2</sup> At the time of Lyle's death, Lyle and Irene also owned a joint bank account. Plaintiffs allege that after Lyle's death, Irene added Tamara as a joint owner of the bank account, and that the balance of the account as of September 20, 2011, was \$293,185.44.

<sup>3</sup> The parties agree that Irene suffered a brain aneurysm in 1997. During the course of this litigation, Irene's competence was questioned by the parties.

In August 2012, Irene and Tamara met with Irene's attorney, John Tamboer, to discuss estate planning. According to Tamboer, during that meeting Irene stated that she wanted to deed the house at 6879 Belhurst to Tamara so that Tamara could live next door and care for her as she aged. Irene then signed a deed to the house at 6879 Belhurst to Tamara, witnessed by Tamboer.

According to Dennis, he was in federal custody from 2008 until mid-2013, and had no first-hand knowledge of these events. Dennis asserted that he first learned that Tamara had "cancelled" the sale of the house at 6879 Belhurst while at a family gathering in 2017. In June 2018, plaintiffs instituted an action in the Ottawa Probate Court seeking to reopen Lyle Homrich's estate and requesting an accounting. The probate court dismissed the petition to reopen the estate, finding that there were no assets in the estate to be probated.

On November 20, 2018, plaintiffs filed their complaint initiating this action and alleging statutory conversion regarding the \$50,000, breach of fiduciary duty regarding the \$50,000, undue influence, and intentional infliction of emotional distress. Plaintiffs alleged that after Lyle died, Tamara cancelled the sale of the house at 6879 Belhurst to Van Baren, then influenced Irene to quitclaim 6879 Belhurst to her for \$100. Plaintiffs further alleged that on September 23, 2011, Tamara used funds from the joint account to purchase the \$50,000 annuity for her own benefit. Plaintiffs further alleged that defendant's actions imperiled Irene's retirement security and "directly diminished the estate to which Defendant's siblings [Dennis and Douglas Homrich] may be entitled."

Defendant moved to dismiss plaintiffs' complaint, and also filed an Answer to the Complaint. In both the motion and the affirmative defenses accompanying the Answer, defendant asserted, among other defenses, that plaintiffs Douglas and Dennis lacked standing and were not the real parties in interest. Defendant thereafter filed an amended motion to dismiss again asserting lack of standing and that plaintiffs were not the real party in interest. Plaintiffs responded to the amended motion to dismiss, and responded to defendant's arguments regarding standing and real party in interest. Defendant thereafter again filed an amended motion to dismiss. After a hearing, the trial court denied defendant's motion to dismiss without prejudice.

Defendant again moved to dismiss plaintiffs' complaint, and again raised standing and the real-party-in-interest rule. Thereafter, defendant moved for summary disposition under MCR 2.116(C)(7), (8), and (10), on the basis that plaintiffs' claims were barred by the statute of limitations, that plaintiffs had failed to state a justiciable claim, and that there was no genuine issue as to any material fact.

After a hearing on the motion, the trial court issued its opinion and order granting defendant summary disposition under MCR 2.116(C)(7), (8), and (10). With respect to Count IV of the Complaint alleging intentional infliction of emotional distress, the trial court found that plaintiffs Douglas and Dennis lacked standing because they were not the real parties in interest. The trial court also found that plaintiffs had failed to establish the elements of intentional infliction of emotional distress. The trial court further found that all counts of the Complaint were barred by the statute of limitations. Plaintiffs thereafter moved for reconsideration, which the trial court denied. Plaintiffs now appeal.

## II. DISCUSSION

### A. STATUTE OF LIMITATIONS

Plaintiffs contend that the trial court erred by granting defendant's motion for summary disposition under MCR 2.116(C)(7) on the basis that their claims are barred by the statute of limitations, and are not saved by the fraudulent concealment tolling provision of MCL 600.5855. We disagree.

We review de novo a trial court's decision to grant or deny summary disposition. *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159; 934 NW2d 665 (2019). We also review de novo issues involving the proper interpretation of statutes. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). Summary disposition under MCR 2.116(C)(7) is appropriate when the claim is barred by the statute of limitations. *Frank v Linkner*, 500 Mich 133, 140; 894 NW2d 574 (2017). When reviewing a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7), this Court considers all documentary evidence in the light most favorable to the nonmovant, *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008), and accepts the complaint as factually accurate unless it is specifically contradicted by affidavits or other documentation. *Frank*, 500 Mich at 140. If there is no factual dispute, whether a claim is barred by the statute of limitations is a question of law for the court. *RDM Holdings*, 281 Mich App at 687.

A statute of limitations is a “ ‘law that bars claims after a specified period; specif[ically], a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued.’ ” *Frank*, 500 Mich at 142, quoting *Black's Law Dictionary* (10<sup>th</sup> ed) (alteration in original). The purpose of a statute of limitations is to protect a defendant from being compelled to defend stale claims. *Stephens v Dixon*, 449 Mich 531, 534; 536 NW2d 755 (1995). To determine the applicable limitations period, a court determines the “gravamen of an action” from the complaint as a whole to determine the exact nature of the claim. *Adams v Adams*, 276 Mich App 704, 710; 742 NW2d 399 (2007). The burden of proving that a claim is barred by the statute of limitations rests with the party asserting that defense. *Prins v Michigan State Police*, 291 Mich App 586, 589; 805 NW2d 619 (2011).

Here, the parties do not dispute that the relevant period of limitations for Counts I-III of the Complaint is six years as provided by MCL 600.5813, which states:

All other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes.

The applicable statute of limitations for Count IV of plaintiffs' Complaint alleging intentional infliction of emotional distress is three years under MCL 600.5805, which provides:

(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

(2) Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person or for injury to a person or property.

The parties also do not dispute that these limitations periods expired before the filing of the Complaint on November 21, 2018. The \$50,000 annuity was established in defendant's name in September 2011, while the property at 6879 Belhurst was deeded to defendant in August 2012. Therefore, there is no dispute that the claims are barred by the statutes of limitations, absent tolling of the limitations period.

However, plaintiffs contend that the statutes of limitations are tolled because defendant fraudulently concealed the claim, contrary to MCL 600.5855, which provides:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on this claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

This provision permits the tolling of a statutory limitations period when a defendant fraudulently concealed the existence of a claim. *Mays v Snyder*, 323 Mich App 1, 39; 916 NW2d 227 (2018), *aff'd* 506 Mich 157 (2020). Under the statute, a plaintiff has two years within which to bring a claim from the time he or she discovers or reasonably should have discovered the claim, if the plaintiff demonstrates fraudulent concealment by the defendant. *Frank*, 500 Mich at 148. Our Supreme Court has observed that this statute "provides for essentially unlimited tolling based on discovery when a claim is fraudulently concealed." *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 391; 738 NW2d 664 (2007).

This Court has defined fraudulent concealment as "employment of artifice, planned to prevent inquiry or escape investigation, and mislead or hinder acquirement of information disclosing a right of action. The acts relied on must be of an affirmative character and fraudulent." *Doe v Roman Catholic Archbishop of Archdiocese of Detroit*, 264 Mich App 632, 642; 692 NW2d 398 (2004) (quotation marks and citation omitted). The alleged concealment must involve conduct designed to prevent the recognition of a cause of action. *Id.* Mere silence ordinarily is insufficient to establish fraudulent concealment. *Reserve at Heritage Village Ass'n v Warren Fin Acquisition, LLC*, 305 Mich App 92, 123; 850 NW2d 649 (2014). "[T]here must be concealment by the defendant of the existence of a claim or the identity of a potential defendant." *McCluskey v Womack*, 188 Mich App 465, 472; 470 NW2d 443 (1991). To successfully assert the fraudulent concealment exception, a plaintiff must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment, and must demonstrate that the defendant made affirmative acts or misrepresentations designed to prevent discovery. *Mays*, 323 Mich App at 39.

In addition, to take advantage of the tolling provision the plaintiff must be reasonably diligent in investigating and pursuing the cause of action. See *Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 48; 698 NW2d 900 (2005). Fraudulent

concealment does not toll the running of the limitation period if the plaintiff could have discovered the fraud, including if the fraud could have been discovered from public records. See *id.* at 45 n 2. If the plaintiff was aware of a possible cause of action, he or she was sufficiently apprised of the cause of action for purposes of the fraudulent concealment statute. *Doe*, 264 Mich App at 643. “The fraudulent concealment which will postpone the operation of the statute must be the concealment of the fact that plaintiff has a cause of action. If there is a known cause of action there can be no fraudulent concealment which will interfere with the operation of the statute. . . .” *Doe*, 264 Mich App at 647 (quotation marks and citation omitted).

In this case, a review of the record indicates that plaintiffs did not plead in the complaint acts or misrepresentations that comprised the alleged fraudulent concealment, and have not demonstrated that the defendant made affirmative acts or misrepresentations designed to prevent discovery. *Mays*, 323 Mich App at 39. Plaintiffs contend, however, that in this case they are not obligated to demonstrate acts or misrepresentations that comprised the concealment because a fiduciary relationship existed between Irene and defendant.

An exception to the requirement that a plaintiff must prove an affirmative act or misrepresentation to demonstrate fraudulent concealment is that a duty to disclose exists when the parties are in a fiduciary relationship, which exists when one person places his or her trust in another because of the other’s superior knowledge. *In re Estate of Karmey*, 468 Mich 68, 74 n 3; 658 NW2d 796 (2003). To demonstrate fraudulent concealment in such circumstances, the plaintiff must allege facts that indicate that the defendant intentionally failed to disclose information to mislead the plaintiff, thereby allowing the period of limitation to expire before the plaintiff realized that he or she had a claim. See *Brownell v Garber*, 199 Mich App 519, 528-529, 531; 503 NW2d 81 (1993). Even when a fiduciary relationship exists, the plaintiff must demonstrate the “employment of artifice, planned to prevent inquiry or escape investigation, and mislead or hinder acquirement of information disclosing a right of action.” See *Dunmore v Babaoff*, 149 Mich App 140, 145; 386 NW2d 154 (1985).

In this case, plaintiffs have not demonstrated any effort by defendant to conceal the two transactions in question. The transactions were planned at a meeting that Irene and Douglas attended together with Irene’s attorney, Irene’s financial planner, and defendant. According to defendant, Douglas also was present when VanBaren was told that the house was no longer for sale, and Douglas was instrumental in having Irene cancel the sale of the house. Plaintiffs point to no part of the transactions that defendant concealed. Plaintiffs therefore failed to demonstrate that the statute of limitations was tolled by MCL 600.5855.

Plaintiffs also contend that the trial court should have permitted them an opportunity to seek to amend their complaint before granting defendant summary disposition. When a trial court grants summary disposition under MCR 2.116(C)(8), (9), or (10), the trial court is required to give the nonmovant an opportunity to amend its pleadings as provided by MCR 2.118, unless the evidence demonstrates that amendment is not justified. MCR 2.116(I)(5); see also *Jawad A. Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 209; 920 NW2d 148 (2018). In this case, although the trial court granted defendant summary disposition under MCR 2.116(C)(8) and (10), it also granted defendant summary disposition under MCR 2.116(C)(7) because the claim is barred by the statute of limitations. Plaintiffs therefore were not entitled to seek to amend their complaint, and indeed, doing so would be futile.

Because plaintiffs' claims are barred by the statute of limitations, we decline to reach their additional arguments on appeal that the trial court erred by granting defendant summary disposition of plaintiffs' claim for intentional infliction of emotional distress on the basis of standing, and on the basis that no genuine issue of material fact existed that plaintiffs failed to demonstrate that they had suffered severe emotional distress.

Affirmed.

/s/ Jane E. Markey  
/s/ Douglas B. Shapiro  
/s/ Michael F. Gadola